

to Ames et al. ("Ames"). For at least the following reasons, Applicants respectfully traverse the rejection.

Independent claims 5, 8 and 14 recite the limitation "wherein a transverse distance between the first and second fastening components is substantially equal to a transverse distance between the first and second mating fastening components." The transverse distance between a set of fasteners is defined as "the distance measured parallel to the transverse axis 49 between the longitudinal centerlines of the fasteners, measured with the side panels 34 and 134 in an unstretched condition." Specification, page 21, lines 13-16 (emphasis added). Figures 2 and 3 illustrate an embodiment of the invention in which a transverse distance between first and second fastening components is substantially equal to a transverse distance between first and second mating fastening components.

Neither Sayama nor Ames, nor the combination of the two, discloses an absorbent article wherein a transverse distance between first and second fastening components is substantially equal to a transverse distance between first and second mating fastening components. Specifically, Figure 1 of Sayama (referenced by the Examiner) discloses a pair of fastening components and a pair of mating fastening components, but the transverse distance between the longitudinal centerlines of the fastening components is not substantially equal to the transverse distance between the longitudinal centerlines of the mating fastening components." Thus, Sayama/Ames does not teach each and every claim limitation with respect to independent claims 5, 8 and 14.

Dependent claim 15 further recites that "the first and second fastening components are disposed in the back waist region abutting the back waist edge and the first and second mating fastening components are disposed in the front waist region abutting the front waist edge." Sayama teaches covering the hook fasteners with a suitable sheet material to alleviate potential irritation. Col. 1, lines 32-52. As illustrated in Fig. 1 of Sayama, the protective sheet 18 extends over the peripheral area of the hook fastener. To do so, the protective sheet is shown as abutting the waist edge. There is no disclosure or suggestion of how or why the hook fasteners of Sayama could abut the waist edge and be covered by the protective sheet 18. Therefore, Sayama teaches away from modifying the hook fastener to abut the waist edge. Accordingly, Sayama/Ames does not render dependent claim 15 obvious for at least this additional reason.

Independent claim 25 is directed to a disposable absorbent article having "a pair of refastenable seams extending from the waist opening to each leg opening[.]" Neither Sayama

nor Ames, nor the combination of the two, discloses a disposable absorbent article having this feature. The hook fasteners 15 and the loop fasteners 16 as disclosed by Sayama do not appear to be capable of providing refastenable seams extending from the waist opening to each leg opening. Similarly, the various configurations disclosed by Ames (see, for example, Figs. 3-5) do not provide refastenable seams extending from the waist opening to the each leg opening. Indeed, the fasteners are nowhere near the leg openings. Thus, Sayama/Ames does not teach each and every claim limitation with respect to independent claim 25.

For at least the reasons articulated above, claims 5, 18, 14-19 and 25-28 are believed to be patentable over the cited references.

#### **B. Rejection Of Claims 20 and 29 Under 35 U.S.C. § 103 (a)**

Claims 20 and 29 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Sayama and Ames and further in view of U.S. Patent 5,087,253 issued February 11, 1992 to Cooper. Applicants respectfully traverse this rejection.

Dependent claim 20 further recites that "the pant-like configuration defines a waist opening and leg openings and engagement of the fastening components and mating fastening components defines refastenable seams, the refastenable seams covering about 90 to about 98 percent of a distance between the waist opening and the leg openings." Independent claim 29 recites "fastening components and ... mating fastening components each comprising mechanical fasteners having a length-to-width ratio of about 5 or greater, [wherein] engagement of the fastening components and mating fastening components defines refastenable seams that cover about 80 to 100 percent of the distance between the waist opening and the leg openings." The Examiner states that it would have been obvious to employ the fasteners of Cooper with the diaper of Sayama/Ames to provide fastening components and refastenable seams having these characteristics. Paper No. 17, section 6.

Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness. As the Federal Circuit states:

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so." (quoting ACS Hosp. Systems, Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)). . . . The mere fact that the prior art may be modified in the manner suggested by the

Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

In re Fritch, 23 USPQ 2d 1780, 1783–84 (Fed. Cir. 1992). The Examiner has not pointed to a specific motivation to combine Cooper, Sayama and Ames in any of the references themselves. As stated above, the mere fact that the references may be combined does not make the combination obvious unless one of the references specifically suggests the desirability of making the combination. Because the requisite suggestion to combine is absent here, Applicants assert that a *prima facie* case of obviousness has not been properly established with respect to claims 20 and 29. Accordingly, Applicants request that the rejection be withdrawn.

**C. Rejection Of Claims 21-24 Under 35 U.S.C. § 103 (a)**

Claims 21-24 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Sayama and Ames further in view of U.S. Patent 5,782,819 issued July 21, 1998 to Tanzer et al. ("Tanzer"). Claim 21 has been canceled, and claim 22 has been rewritten in independent form to include all of the limitations of the base claim. Claim 23 has been amended to depend from claim 22. Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness with respect to claims 22-24.

The Examiner has not pointed to a specific motivation to combine Tanzer, Sayama and Ames in any of the references. As noted earlier, the mere fact that references may be combined does not make the combination obvious unless one of the references specifically suggests the desirability of doing so. Because the requisite suggestion to combine is absent here, Applicants assert that a *prima facie* case of obviousness has not been properly established with respect to claims 22-24.

Moreover, even if the references were combined, such a combination would not teach each and every limitation of claims 22-24. Claim 22 as amended requires:

support members bonded to and extending transversely outward from the first and second elastomeric side panels in the first waist region;

support members bonded to and extending transversely outward from the first and second elastomeric side panels in the second waist region; and

a fastening system for releasably securing the absorbent article in a pant-like configuration, the fastening system comprising first and second mating fastening components disposed on the support members in the first waist region adapted to releasably engage first and second fastening components disposed on the support members in the second waist region;

wherein the elastomeric side panels in the first waist region are longitudinally spaced from the elastomeric side panels in the second waist region, and a width of the elastomeric side panels in the first waist region is the same as a width of the elastomeric side panels in the second waist region.

Tanzer does not teach or suggest support members extending from side panels in both the first and second waist regions. Further, modifying the diaper of Sayama to include support members extending transversely outward from both the front and back waist regions, and disposing the fastening components and mating fastening components on the support members in the front and back waist regions would significantly alter the design of the Sayama diaper and thus its ability to properly conform to the wearer. The hook fasteners 15 of the Sayama diaper are designed to interlock with the loop fasteners 16 located on the front waist region of the diaper (Col. 2, lines 34-36); the loop fasteners 16 are not configured to be located on support members extending transversely outward from the side panels. Thus, Sayama appears to teach away from employing support members as claimed by Applicants.

For at least these reasons, independent claim 22 and associated dependent claims 23 and 24 are believed to be patentable over Sayama and Ames further in view of Tanzer.

#### **D. Conclusion**

The application now contains claims 5, 8 and 14-20 and 22-29 which are believed to be in condition for allowance. Applicants would like to thank the Examiner for the careful attention paid to the present application. Early allowance of the claims in view of the above remarks is earnestly requested.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7844

Respectfully submitted,

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## CERTIFICATE OF MAILING

I, Mary L. Roberts, hereby certify that on December 5, 2002 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

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